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Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 7202

Dear Mr. Jordan:

On behalf of Hillary for America and Jose H. Villarreal, in his official capacity as Treasurer (collectively, "Respondents"), we submit this letter in response to the complaint filed by Mark Morgan ("Complainant") on December 6, 2016 (the "Complaint"). The Federal Election Commission ("FEC" or "Commission") should find no reason to believe Respondents committed any violation, dismiss the complaint and close the file.

The thrust of the Complaint is that, because Dr. Jill Stein, the Green Party candidate for President of the United States, petitioned the State of Wisconsin for a recount of the state's 2016 presidential general election results, and because Dr. Stein herself "had no way of improving her fourth place finish," the expenses she incurred toward the recount must have represented contributions to Secretary Clinton's campaign, "far exceeding the federal limit of \$2,000 that may be spent by a campaign committee on behalf of another campaign committee."

Yet, the Complaint fails to present any potential violation of the Federal Election Campaign Act of 1971, as amended, or FEC regulations.

First, the Complaint presents no valid allegation of coordination between Dr. Stein and Respondents. It claims simply that unnamed witnesses "admit to having met with key senior staff members of the Clinton campaign and urging them to request recounts [sic]."² The Complaint claims also that the "content prong" of the Commission's rules were somehow met, but without identifying ever any communication that referred to Secretary Clinton, Donald J. Trump or Dr. Stein.³ Such "lack of supporting detail" is fatal to the Complaint—which, "at a minimum, should

¹ Compl. at 1-2.

² Compl. at 4.

³ See 11 C.F.R. § 109.21(c); Compl. at 4.

have made a sufficiently specific allegation... so as to warrant a focused investigation that can prove or disprove the charge.”⁴

Second, the Complaint similarly fails to present any violation of the only statute it actually cites: 11 C.F.R. § 110.1(h). As the Commission has previously said: “In order for a contribution to an unauthorized committee to be aggregated with an individual’s contribution limits for a particular candidate, the Commission has required that the contributor have ‘actual knowledge’ of the committee’s plans to use his or her contribution contribute to or expend funds on behalf of the candidate to meet the requirements of section 110.1(h)(2).”⁵ That a donor “might reasonably infer” that some of her funds would be used to support another candidate is not enough to meet the “actual knowledge” requirement, and thus falls short of presenting any sort of potential violation.⁶ There is simply no legal basis for the Complaint’s core claim that contributions to the Stein campaign’s recount efforts were automatically contributions to Respondents.

Third, the Complaint entirely overlooks the fact that funds raised and spent with respect to recounts are not “contributions” or “expenditures” at all.⁷ While the Commission has advised that 52 U.S.C. § 30125’s prohibitions on raising and spending nonfederal funds apply to the financing of recount activities, the Complaint identifies no conduct by Respondents that could be remotely seen as a breach of these prohibitions.⁸

Finally, the Complaint in no way accurately states Respondents’ position on the recount initiated by Dr. Stein. While the Complaint claims—without citing any source—that “[t]he Clinton campaign has publicly declared its support for the recount efforts,” Respondents actually said through their counsel that “we had not planned to exercise this option ourselves,” but that, because Dr. Stein had initiated the recount,

we intend to participate in order to ensure the process proceeds in a manner that is fair to all sides ... [R]egardless of the potential to change the outcome in any of the states, we feel it is important, on principle, to ensure our campaign is legally represented in any court proceedings and represented on the ground in order to monitor the recount process itself.⁹

⁴ First General Counsel’s Report, MUR 5972, at 8 (Iowa Christian Alliance) (quoting Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas, MUR 4960 (Dec. 21, 2000)).

⁵ Factual and Legal Analysis, MUR 6221, at 10-11 (Kilpatrick for United States Congress).

⁶ *Id.* at 11-12.

⁷ See 11 C.F.R. §§ 100.91, 100.151.

⁸ See, e.g., FEC Adv. Op. 2006-24 (Republican and Democratic Senatorial Committees).

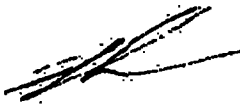
⁹ Marc Erik Elias, *Listening and Responding To Calls for an Audit and Recount*, Medium (Nov. 26, 2016), available at <https://medium.com/@marceelias/listening-and-responding-to-calls-for-an-audit-and-recount-2a904717ea39#.c524awl8e>.

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For these reasons, the Commission should find no reason to believe Respondents violated the Act, immediately dismiss the Complaint and take no further action.

We appreciate the Commission's consideration of this response.

Very truly yours,

A handwritten signature in black ink, appearing to be "Marc E. Elias", written over a horizontal line.

Marc E. Elias
Brian G. Svoboda
Counsel to Respondents